

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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TERRY GAINES,

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION, a
Washington Corporation; and DOES
1 to 100, inclusive,

Defendant.

No. 2:21-cv-00992 WBS AC

MEMORANDUM AND ORDER RE:
PLAINTIFF'S MOTION TO REMAND

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Plaintiff Terry Gaines ("plaintiff") brought this action against defendant Costco Wholesale Corporation ("Costco") because of a series of interactions he had with Costco employees while shopping at Costco's Stockton location on August 28, 2020. (See Def.'s Notice of Removal, Ex. A ("Compl.") ¶ 12 (Docket No. 1-1).) The thrust of plaintiff's complaint is that Costco employees treated him disrespectfully and differently than other customers because of his race, causing plaintiff to suffer severe emotional distress and embarrassment. (See id.)

1 Specifically, plaintiff alleges that, after he had
2 finished shopping and was trying to pay for his items, Costco
3 employees scrutinized his Costco Club membership card, requested
4 to see his identification multiple times, and required him to use
5 multiple credit cards to pay. (See id. at ¶¶ 12-16.) After
6 Costco cashiers told plaintiff that Costco "did not take
7 Mastercard" loud enough for everyone in line to hear, plaintiff
8 alleges that one of the cashiers told him to "have a nice day" in
9 a sarcastic and provoking manner. (See id. at ¶ 16.)

10 Plaintiff then attempted to complain to Costco
11 management about the cashiers' behavior. (See id. ¶¶ 17-19.)
12 Plaintiff alleges that he was forced to speak with four different
13 supervisors before being permitted to speak with a manager,
14 despite asking to speak with a manager five times. (Id.) Once
15 plaintiff finally described what happened to a manager, he
16 alleges that the manager told him the cashiers had violated
17 Costco policy and apologized to him. (Id.) Plaintiff filed a
18 formal complaint with the manager. (Id.)

19 Plaintiff then brought this action against Costco in
20 San Joaquin County Superior Court, claiming that the actions of
21 Costco's employees violated the Unruh Civil Rights Act, Cal. Civ.
22 Code § 51, et seq., California's Unfair Competition Law ("UCL"),
23 Cal. Bus. & Profs. Code § 17200, and constituted negligent
24 supervision, hiring, and retention, and intentional infliction of
25 emotional distress. (See generally Compl.) On June 3, 2021,
26 Costco removed the action to this court on the basis of diversity
27 of citizenship. (See Def.'s Notice of Removal at 1 (Docket No.
28

1) .) Plaintiff now moves to remand this action to state court.¹

2) (See Mot. to Remand (Docket No. 5).)

3) Discussion

4) A. Amount in Controversy

5) “[A]ny civil action brought in a State court of which
6) the district courts of the United States have original
7) jurisdiction, may be removed by the defendant or the defendants,
8) to the district court of the United States for the district . . .
9) where such action is pending.” 28 U.S.C. § 1441(a). However, if
10) “it appears that the district court lacks subject matter
11) jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).

12) Federal courts have original jurisdiction over cases
13) where complete diversity exists between the parties and the
14) amount in controversy exceeds \$75,000, exclusive of interest and
15) costs. 28 U.S.C. § 1332(a). To satisfy the requirements for
16) complete diversity, “each of the plaintiffs must be a citizen of
17) a different state than each of the defendants.” Morris v.
18) Princess Cruises, Inc., 236 F.3d 1061, 1067 (9th Cir. 2001)
19) (citing Caterpillar Inc. v. Lewis, 519 U.S. 61, 68 (1996)).

20) Plaintiff concedes in his motion to remand that
21) § 1332(a)’s complete diversity of citizenship requirement is met
22) because Costco is a Washington citizen for the purposes of
23) diversity. (See Mot. to Remand at 5 n.2.) Accordingly,
24) plaintiff focuses on the amount in controversy requirement,
25) arguing that, even if all doubts are resolved in favor of Costco,

26) ¹ The court determines it would not be assisted by oral
27) argument on the motion. Accordingly, the hearing previously set
28) for July 26, 2021 is vacated, and the motion will be decided on
the written submissions of the parties.

1 the actual amount in controversy in this action does not exceed
2 \$75,000. (See id. at 5-6.) Plaintiff does not enumerate his
3 claimed damages in his complaint. (See generally Compl.)
4 However, the complaint makes it clear that plaintiff seeks
5 statutory damages, special damages for emotional distress,
6 general damages, punitive damages, attorneys' fees, and costs.
7 (See Compl. at Prayer for Relief, ¶¶ 1-10.)

8 In cases where a plaintiff's state court complaint does
9 not specify a particular amount of damages, the removing
10 defendant bears the burden of establishing, by a preponderance of
11 the evidence, that the amount in controversy exceeds \$75,000.
12 Sanchez v. Monumental Life Ins. Co., 102 F.3d 398, 404 (9th Cir.
13 1996). "Under this burden, the defendant must provide evidence
14 establishing that it is more likely than not that the amount in
15 controversy exceeds that amount." See id.

16 Costco first points to a number of jury verdicts in
17 cases involving similar facts, all of which exceeded \$75,000, as
18 evidence that the amount in controversy in this case exceeds the
19 statutory minimum.² In particular, Costco cites to Mitchell v.

20 ² Costco requests that the court take judicial notice of
21 three items: (1) a certified copy of the judgment in Mitchell v.
22 Soleyman, Case No. 00-12591-AHM-CTX (C.D. Cal. Aug. 12, 2002);
23 (2) a summary of the jury verdict in Oliver v. Creditford, Santa
Clara County Super. Ct. Case No. CV 773021 (Mar. 27, 2002); and
24 (3) a summary of the jury verdict in Gallegos v. Los Angeles City
25 College, 2003 WL 23336379, Los Angeles County Super. Ct. (Oct.
26 16, 2003). (See Def.'s Request for Judicial Notice at 1-2 ("RJN")
27 (Docket No. 7).) The court may take judicial notice of matters
28 of public record, including prior federal and state court
proceedings. Here, the accuracy of the jury verdicts as public
records of prior proceedings can be determined by readily
available resources whose accuracy cannot reasonably be
questioned. See Vasquez v. Arvato Digital Services, LLC, No. CV
11-02836 RSWL (AJWx), 2011 WL 2560261, at *2 (C.D. Cal. June 27,

1 Soleyman, where a jury awarded \$75,000 in statutory damages per
2 plaintiff for plaintiffs' claims of racial discrimination in
3 violation of the Unruh Civil Rights Act. (See RJD at Ex. A.)
4 Costco also cites to Oliver v. Creditford, where a jury awarded
5 \$231,700 for intentional infliction of emotional distress in
6 connection with a discrimination claim. (See id. at Ex. B.)
7 Because this case also involves claims for racial discrimination
8 under the Unruh Civil Rights Act and for intentional infliction
9 of emotional distress in connection with that claim, and the
10 Ninth Circuit has specified that a defendant may rely on jury
11 verdicts in cases involving similar facts to establish the amount
12 in controversy, see Kroske v. U.S. Bank Corp., 432 F.3d 976, 980
13 (9th Cir. 2005), the court finds that these cases indicate that
14 the amount in controversy in this case exceeds \$75,000.

15 Costco next argues that the attorneys' fees in this
16 case could be substantial.³ District courts in California have
17 noted that maintaining a race discrimination claim requires
18 substantial effort on the part of plaintiff's counsel -- so much
19 so that attorneys' fees in individual discrimination cases often
20 exceed the damages. See Simmons v. PCR Tech., 209 F. Supp. 2d
21 1029, 1035 (N.D. Cal. 2002). In Mitchell, for instance, the
22 court awarded attorneys' fees in excess of \$185,000 where the
23 jury only awarded \$75,000 in statutory damages to each plaintiff

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25 2011). Plaintiff has not objected. Accordingly, the court will
grant Costco's request in its entirety.

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27 ³ The Unruh Act authorizes "attorney's fees as may be
determined by the court." See Cal Civ. Code § 52(b)(3). The
28 amount in controversy includes attorney's fees if authorized by
statute. See Kroske, 432 F.3d at 980.

1 under the Unruh Civil Rights Act. (See RJD at Ex. A.) And even
2 in instances where fees do not exceed damages, case law shows
3 that attorneys' fees regularly exceed \$100,000 in discrimination
4 cases under California law. (See, e.g., RJD at Ex. C (awarding
5 \$159,277 in attorneys' fees where verdict was for \$210,082).)
6 Plaintiff's request for attorneys' fees alone could therefore
7 easily result in the amount in controversy in this case exceeding
8 \$75,000.

9 Next, the court considers plaintiff's prayer for
10 punitive damages. See Davenport v. Mutual Ben. Health & Acc.
11 Ass'n, 325 F.2d 785, 787 (9th Cir. 1963) (noting that requests
12 for punitive damages may also be considered when ascertaining the
13 amount in controversy). Although Costco has not provided
14 examples of jury verdicts of punitive damages in similar cases,
15 it contends that because the amount of punitive damages awarded
16 are based on the financial worth of the defendant and are meant
17 to punish the defendant in such a way that it will have a
18 tangible financial consequence, a punitive damages award for a
19 defendant of Costco's size would exceed \$75,000. (See Def.'s
20 Notice of Removal at 6.) Because plaintiff has presented no
21 contrary argument regarding punitive damages for a defendant of
22 Costco's size, the court agrees with Costco that a punitive
23 damages award would likely exceed \$75,000.

24 Finally, and perhaps most critically, Costco points to
25 a settlement demand letter sent by plaintiff on September 25,
26 2020 where he asserts that \$ 75,000 is a "fair compromise of
27 plaintiff's claims" and that he expects to "recover no less than
28 \$100,000 in this case on the Unruh Civil Rights Act claim alone."

1 (See Decl. of Michelle DuCharme in Opp'n to Mot. to Remand at Ex.
2 1 ("DuCharme Decl.") (Docket No. 6-2).) Plaintiff later sent
3 Costco a demand letter on April 20, 2021, which requested only
4 \$20,000 as a fair compromise, but still emphasized that plaintiff
5 expected to recover no less than \$100,000 on the Unruh Civil
6 Rights Act claim alone. (See id. at Ex. 2.)⁴ The Ninth Circuit
7 has held that a settlement letter is relevant evidence of the
8 amount in controversy if it reflects a reasonable estimate of the
9 plaintiff's claim. See Cohn v. PetSmart, Inc., 281 F.3d 837, 840
10 (9th Cir. 2002). It therefore appears that even by plaintiff's
11 own calculation, this case is worth substantially more than the
12 jurisdictional amount.⁵

13 When viewed in combination, the evidence presented by
14 Costco regarding plaintiff's claim for general damages,
15 attorney's fees, and punitive damages satisfies its burden of

16 ⁴ Plaintiff additionally filed a Rule 68 Offer of
17 Judgment on June 16, 2021 offering to settle the case for
\$74,999. (See DuCharme Decl. at Ex. 2.) As a preliminary
18 matter, a Rule 68 offer is reserved for parties defending against
a claim. See Fed. R. Civ. P. 68(a) ("a party defending against a
19 claim may serve on an opposing party an offer to allow judgment
on specified terms."). Moreover, the Supreme Court "has long
20 discouraged reliance on post-removal stipulations and
affidavits," See St. Paul Mercury Indemnity Co. v. Red Cab Co.,
21 303 U.S. 283, 292 (1938) (district court jurisdiction is not
defeated where plaintiff reduces the claim below the requisite
22 amount by stipulation, affidavit, or amendment after removal).
The court therefore gives little credence to this post-removal
23 offer of judgment from plaintiff.

24 ⁵ Plaintiff has provided no alternative calculations as
25 to how much this case might be worth in their motion or cited to
any jury verdicts substantially below the jurisdictional
26 threshold. Nor has plaintiff attempted to distinguish any of the
27 cases cited by Costco or provided any explanation regarding the
settlement letters sent to Costco.

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1 proving, by a preponderance of the evidence, that the amount in
2 controversy exceeds \$75,000. Because the Ninth Circuit has
3 instructed district courts to consider the aggregate of general
4 damages, special damages, punitive damages, and attorneys' fees
5 when authorized by statute, see Galt G/S v. JSS Scandinavia, 142
6 F.3d 1150, 1156 (9th Cir. 1998) (claims for statutory attorneys'
7 fees must be included in the amount in controversy regardless of
8 whether such an award is discretionary or mandatory); Davenport,
9 325 F.2d at 787 (punitive damages must be considered when
recoverable under state law), the court will deny plaintiff's
10 motion to remand this case to state court.

12 B. Plaintiff's Request for Attorneys' Fees and Costs

13 Plaintiff also seeks "attorney's fees and costs
14 incurred because of the wrongful removal of this action." (See
15 Mot. to Remand at 7.) "[C]ourts may award attorney's fees under
16 [28 U.S.C.] § 1447(c) only where the removing party lacked an
17 objectively reasonable basis for seeking removal. Conversely,
18 when an objectively reasonable basis exists, fees should be
19 denied." Martin v. Frankline Capital Corp., 546 U.S. 132, 141
20 (2005) (citations omitted). Here, for the reasons discussed
21 above, Costco had an objectively reasonable basis for seeking
22 removal. Plaintiff is therefore not entitled to attorney's fees
23 or costs on this motion.⁶

24 IT IS THEREFORE ORDERED that the plaintiff's motion to

25 6 Plaintiff also contends that Costco failed to "provide
26 all documents filed in the State Court Action." (See Mot. to
27 Remand at 7.) However, plaintiff has not identified what
specific documents Costco allegedly failed to attach to its
28 notice of removal or how plaintiff was prejudiced thereby.

1 remand, (Docket No. 5), be, and the same hereby is, DENIED.

2 Dated: July 21, 2021


3 WILLIAM B. SHUBB
4 UNITED STATES DISTRICT JUDGE

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